**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929**

**WP(C).No. 12100 of 2007(M)**
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**PETITIONER:**
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**JYOTHIRMAYI, KIDANGILTHEKKATHIL,**
**THEKKEMAMALIL VEEDU, MANGAD, KOLLAM.**

**BY ADV. SRI.K.SUBASH CHANDRA BOSE**
**SRI.V.RAJASEKHARAN PILLAI**

**RESPONDENTS:**
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**STATE OF KERALA, REPRESENTED BY THE**
**DISTRICT COLLECTOR, KOLLAM.**

**BY GOVERNMENT PLEADER SHRI L.G. SURESH BABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXHIBIT P1 TRUE COPY OF THE CLAIM STATEMENT IN LAR NO.300/1997 BEFORE THE ADDITIONAL SUB COURT, KOLLAM DATED NIL.**

**EXHIBIT P2 TRUE COPY OF THE JUDGMENT IN LAR NO.300/1997 DO. DATED 17.5.2005.**

**EXHIBIT P3 TRUE COPY OF THE DECREE IN LAR NO.300/1997, DO. DO.**

**EXHIBIT P4 TRUE COPY OF THE AFFIDAVIT AND PETITION FILED IN I.A.NO.1515 OF 2006 IN LAR NO.300/1997 DO. DO. DATED 17.6.2005.**

**EXHIBIT P5 TRUE COPY OF THE ORDER IN I.A. NO.1515 OF 2006 IN LAR NO.300/1997 DO. DO. DATED 7.1.2006.**

**RESPONDENTS' EXHIBITS: NIL**

**K. PADMANABHAN NAIR, J.**

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W.P(C) NO. 12100 OF 2007

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Dated this the 11th day of April, 2007

**J U D G M E N T**

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Heard. Admitted. Learned Government Pleader takes notice for the respondent. The Writ Petition itself is heard and disposed of as agreed to by both sides.

2. Certain extent of property belonging to the petitioner was acquired for a public purpose. Dissatisfied with the compensation awarded by the Land Acquisition Officer, petitioner made a request for referring the case for enhancement of compensation and LAR No.330 of 1997 was registered. The said case came up for trial on 17.5.2005. On that day petitioner was absent. Hence the learned Sub Judge closed the LAR finding that the compensation awarded by the Land Acquisition Officer was just and reasonable. Petitioner filed I.A. No.1515 of 2005 under Order IX Rule 9 CPC for restoration of the LAR dismissed for default. Learned Sub Judge took a view that there was no dismissal for default and the LAR was dismissed on merits and

hence the application filed under Order IX Rule 9 was dismissed as not maintainable. Challenging that order, this Writ Petition is filed.

3. The case was referred to the Sub Judge to consider the request of the petitioner for enhancement of compensation. Materials on record also show that the reference was closed on account of the failure on the part of the petitioner to appear and give evidence. Though it may not be possible to treat it as a case for dismissal for default, the learned Sub Judge could have treated the application as one filed to review the judgment passed in the LAR. Considering all aspects of the matter, I am of the view that it is a fit case in which the petitioner an be given an opportunity to adduce evidence and contest the case on merits. For that purpose, the orders passed by the learned Sub Judge dismissing I.A. No.1515 of 2005 and also the judgment passed in LAR No.300 of 1997 are liable to be set aside.

In the result, the Writ Petition is allowed. The order passed by the learned Sub Judge, Kollam in I.A. No.1515 of 2005 and the judgment passed in L.A.R. No.300 of 1997 on 17.5.2005

confirming the award passed by the Land Acquisition Officer are hereby set aside. I.A.No.1515 of 2005 is allowed. The Sub Judge is directed to take LAR No.300 of 1997 back to file and dispose of the same in accordance with law after giving the petitioner a reasonable opportunity to adduce evidence.

**K. PADMANABHAN NAIR, JUDGE.**

**vsv**

**K. PADMANABHAN NAIR, J.**

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**M.F.A. NO. OF**

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J U D G M E N T

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9TH APRIL, 2007